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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 291

SAM COLEMAN,

Petitioner,

vs.

THE STATE OF KANSAS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

ELISHA SCOTT,
JOHN J. SCOTT,
CHARLES S. SCOTT,
Counsel for Petitioner.

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1. Comes now Sam Coleman and respectfully petitions the Honorable Court for a writ of certiorari and states that he is the Appellant in the above-entitled cause.

2. That the State of Kansas filed an information on or about the 18th day of December 1947, charging your petitioner and one Donald Parker, jointly, with receiving or buying stolen property, to-wit: 40 cases of beer, knowing same to be stolen.

3. That a hearing of the cause was had on the 10th day of March, 1948 wherein your petitioner and Donald Parker were convicted by a jury. A motion for new trial was filed on behalf of your petitioner and Donald Parker, which was heard on the 7th day of April, 1948, and which was overruled.

4. An appeal was taken from the order overruling the motion for new trial together with judgment which was pronounced upon the verdict of guilty, and all other rulings and decisions of the trial court, to the Supreme Court of the State of Kansas. Said judgment was affirmed by said Supreme Court in the April session of the January term 1949 and the case is reported in *State of Kansas* v. *Sam Coleman, Donald Parker,* 166 Kan. 707 (Adv. No. 4) and thereafter Appellant applied for a rehearing, which was denied by said court without opinion on the 13th day of May, 1949. Thereafter, your petitioner, by leave of said Supreme Court first obtained, made a second application for rehearing but was denied by the Supreme Court and final judgment was entered against your petitioner, then in said Supreme Court; in which court is the highest court of law and equity in said State in which a decision of the matters in controversy can be had.

5. That in said cause there is drawn in question the validity of a statute, to-wit: G. S. of Kan. 1935, 62-1341, on the ground that it is repugnant to the Constitution of the United States and the Constitution of the State of Kansas, and said statute is challenged as violating and being in contravention of and to the 14th Amendment of the Constitution of the United States which reads as follows:

> "Citizenship privileges or immunities; due process clause. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That the above statute is in contravention to Section 10 of the Kansas Constitution which reads as follows:

"Trial; defense of accused. In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel; to demand the nature and cause of the accusation against him; to meet the witness face to face, and to have compulsory process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense."

The said statute in question reads as follows:

"Notice of the plea of alibi. In the trial of any criminal action in the district court, where the complaint, indictment or information charges specifically the time and place of the offense alleged to have been committed, and the nature of the offense is such as necessitated the personal presence of the one who committed the offense, and the defendant proposes to offer evidence to the effect that he was at some other place at the time of the offense charged, he shall give notice in writing of that fact to the county attorney. The notice shall state where defendant contends he was at the time of the offense, and shall have endorsed thereon the names of witnesses which he proposes to use in support of such contention. On due application, and for good cause shown, the court may permit defendant to endorse additional names of witnesses on such notice, using the discretion with respect thereto now applicable to allowing the county attorney to endorse names of additional witnesses on an information. The notice shall be served on the county attorney as much as seven days before the action is called for trial, and a copy thereof, with proof of such service, filed with the clerk of the court: Provided, On due application and for good cause shown the court may permit the notice to be served at any time

before the jury is sworn to try the action. In the event the time and place of the offense are not specifically stated in the complaint, indictment or information, on application of defendant that the time and place be definitely stated in order to enable him to offer evidence in support of a contention that he was not present, and upon due notice thereof, the court shall direct the county attorney either to amend the complaint or information by stating the time and place of the offense as accurately as possible, or to file a bill of particulars to the indictment or information so stating the time and place of the offense, and thereafter defendant shall give the notice above provided if he proposes to offer evidence to the effect that he was at some other place at the time of the offense charged. Unless the defendant gives the notice as above provided he shall not be permitted to offer evidence to the effect that he was at some other place at the time of the offense charged. In the event the time or place of the offense has not been specifically stated in the complaint, indictment or information, and the court directs it be amended, or a bill of particulars filed, as above provided and the county attorney advises the court that he cannot safely do so on the facts as he has been informed concerning them; or if in the progress of the trial the evidence discloses a time or place of the offense other than alleged, but within the period of the statute of limitations applicable to the offense and within the territorial jurisdiction of the court, the action shall not abate or be discontinued for either of those reasons, but defendant may, without having given the notice above mentioned, offer evidence tending to show he was at some other place at the time of the offense.

It is this section which was invoked by the trial court which denied your petitioner to offer any evidence in support of his defense. Your petitioner was definitely in Junction City, Geary County, Kansas, at the time the offense was alleged to have been committed.

It is further contended by your petitioner that the following errors which were committed by the trial court denied your petitioner of his constitutional rights which are granted under the 14th Amendment cited above, and they read as follows:

Assignment of Errors

I

That the Court erred in overruling Defendants' Motion for New Trial.

II

That the Court erred in denying the Defendants' Motion to Quash the Information filed by the State.

III

That the Court erred in denying Defendants' Motion to Require the State to File a Bill of Particulars and to set out a specific date as to when the stolen property was received by these Defendants.

IV

That the Court erred in denying the Defendant, Sam Coleman, to prove his defense, to-wit: Alibi.

V

That the verdict of the jury is contrary to law and not sustained by the evidence. The only testimony attempting to connect the defendant were the uncorroborated testimonies of the burglars and thieves who were witnesses for the State—not a single other witness appeared. That the witnesses for the State were accomplices and criminals of long records.

VI

That the court misdirected the jury on material matters of law, and that the court refused to instruct the jury under and by virtue of a misdemeanor statute in such cases made and provided.

VII

That the Court refused to permit the defendant to offer surrebuttal evidence that was offered by the defendant to rebut the testimony of officers Roth and Pope by Evelyn Heller Brown. The officers testified that they received the call around 4:00 a. m. and called the proprietor. That the proprietor was a man. She would have testified that she did not receive any notice of the breaking or entering in her building at 211 E. Crane Street. That she went there as usual about 6:30 in the morning and found that her place had been entered into and property taken. That she was the sole proprietor at the time and was not married.

VIII

That the court admitted into the record over the objection of the defendant's attorney illegal and incompetent evidence. That said evidence was prejudicial to the rights of the defendant.

IX

That the jury was influenced by prejudice and passion, and that the verdict is not a fair, honest expression on the part of the whole jury.

6. WHEREFORE, your petitioner prays for the allowance of this writ of certiorari in order that the decision of the Supreme Court of the State of Kansas may be examined and reversed; and also prays that a transcript of the record proceedings and papers in this case duly authenticated by

the Clerk of the Supreme Court of the State of Kansas may be sent to the Supreme Court of the United States as provided by law.

7. The errors upon which your petitioner claims to be entitled to a writ of certiorari as it is above indicated and more fully set out in the assignment of errors filed herewith.

Respectfully submitted,

ELISHA SCOTT,
JOHN J. SCOTT,
CHARLES S. SCOTT,
Attorneys for Appellant.

Service of the above and foregoing Petition for Writ of Certiorari is acknowledged by me this 2nd day of June, 1949.

WARREN W. SHAW,
County Attorney.